

Because this is an adversary approach I propose to take, some downgrading and critical reading are suggested.

The ACLU had filed a motion to suppress on behalf of some of the Democrats whose phone conversations had been tapped illegally, alleging that to make the fruit of the illegal activity public would be to deny them their rights. Sirica, predictably, denied the motion. The radio report quoted him as holding that the rights of the innocent must be subordinated to the public right to know (which is inconsistent with his appealed decision in my spectro suit). He claims that in this case the right to know must transcend other rights. I have already written a memo suggesting that he seems to be bent upon a course that can facilitate reversal by systematic denial of the rights of the accused. He then went farther than the indictment and here repeats that, without reported objection by defense counsel. This seems unusual to me.

His ruling may send this to the court of appeals now and thus delay the trial. We'll know soon. According to the radio report, Sirica strained for an example. He selected that of the victim of a rape who can be compelled to testify to the act and to details. That is anything but a parallel, anything but relevant. The comparison with a rape case would be to prove that there had been tapping and bugging and a break in and details of those, not of their consequences. The crimes alleged are in the acts, not the fruits of the acts. What was intercepted is irrelevant. That there was interception satisfies the requirements of the evidence. Where there may be a difference is in theft, that is, what was stolen may have to be produced. But it can also be non-published evidence, and there are precedents for this.

The reason advanced by the prosecution for its farout intent to show these men intended blackmail and thus the tapes have to be entered into evidence, or the summaries, is incredible. First of all, no motive is necessary to the indictment. Second, the prosecutor had earlier said it is impossible to read the minds of men. Blackmail can't be the purpose of these crimes. Any such allegation focuses on the unusual situation, that the government is prosecuting itself. The allegation of blackmail is a contrivance to make it appear that there was no administration sponsorship of or involvement in the crimes. It can have no other purpose.

With blackmail described by the prosecutor as used in its literal sense and with the money these men had, it becomes even more incredible.

The prosecutor responded by saying he would address and present evidence on a variety of motives. If he has a variety, assuming any is necessary, then why does he, as a representative of the Republican administration, have to resort to what can be used to defame his Democratic opposition? Why does he, with a variety of motives, have to use all or to include this fiction, which requires violation of rights? The judge seems not to have addressed this, and among the things that can cause reversal is spurious allegation of fictitious motive. It can be prejudicial and it charges a crime not charged in the indictment.

The judge seems to have question counsel for the plaintiffs, the tapped Democrats, what he knew about the "alleged wiretaps and how the information was used" (Post's words). Neither seems proper for an impartial judge. This is irrelevant to his representation of his clients or to the motion itself.

One of the disclosures is that a conversation between a Dem and GOP is included, relating to the Amer. Council of Young Political Leaders, to which both belonged. The GOP was transferred to a number of other posts. Why this could have been required by his being overheard by the eavesdropping is not clear, if there is connection.

The prosecutor's allegation that he had to disclose the contents of the tapping is necessary to proving conspiracy seems spurious enough. For this the judge, gratuitously, commended him, saying "some of these conversations are important and relevant." He added, "Let's find out what the motive was." If he feels this is necessary, why does not ask why it was excluded from the indictment or why, as with the Berrigan case, the indictment wasn't changed to include it. At the same time he says that evidence that might come up he could and would send to the grand jury for further actions, ominously, "I don't care who it involves." I can't picture him going after Mitchell. But O'Brien?

Prosecutor said there was no basis for any charge against anyone not charged. Not even Caddy? Bennett? Segretti et al?

There seems to be another conspiracy not charged, between the judge and the prosecution,